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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,811	06/24/2003	David V. Boland	2442.001	1082

7590 07/27/2005
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EXAMINER

LYLES IRVING, CARMEN V

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/602,811	BOLAND, DAVID V.	
	Examiner	Art Unit	
	Carmen Lyles-Irving	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,5,7,8,10, 11 and 12 is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>06/24/03; 01/03/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Handwritten signature/initials

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ploovy (U.S. Patent No. 4,921,510). Ploovy teaches an ashtray comprising a container, a bag that is present within said container (Figure 1), and an air eliminator that communicates with a space that is between said bag and said container (column 3, lines 29-34), wherein said bag is attached to said container so that said space is substantially air tight (column 3; lines 41-44). Accordingly, claim 1 is rejected.

Regarding claim 3, Ploovy teaches that said air eliminator communicates with a space that is between said lower portion of said bag and said container (column 3, lines 29-34). Accordingly, claim 3 is rejected.

Regarding claim 4, Ploovy teaches that an upper portion of said container supporting said bag is funnel shaped (Figure 1). Accordingly, claim 4 is rejected.

Regarding claim 9, Ploovy teaches the air eliminator is a vacuum pump (column 4, lines 32-38). Accordingly, claim 9 is rejected.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ploovy as applied to claim 1 above, and further in view of Thomas et al (U.S. Patent No. 3,840,204). Ploovy teaches an apparatus that uses a plastic bag (column 3, lines 25-29). Ploovy fails to teach a bag that is flame-retardant. However, Thomas teaches that ashtrays, particularly the portions holding the ashes (i.e. the cup member 38 in the Thomas teaching), are preferably made of a plastic material, which is heat resistant, and fire proof. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a bag that is flame retardant or heat resistant and fire proof to hold the ashes contained in the ashtray so that the ashes will not melt the bag thereby making the ashtray less effective. Accordingly, claim 6 is rejected.

Allowable Subject Matter

Claims 2, 5, 7, 8, 10, 11 and 12 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art teaches ashtrays or other container capable of holding ashes that are lined with some type of liner or bag. The prior art also teaches containers with evacuation devices or vacuums to evacuate or depressurize the area between the container and the liner or bag. However, the prior art fails to teach a container with an evacuation device that also has a closure mechanism that selectively applies pressure to the bag to separate an upper portion of said bag from a lower portion of said bag.

The instant invention teaches this novelty.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hogan (U.S. Patent No. 5,464,093); Corn (U.S. Patent No. 2,717,014); Freedland (U.S. 5,425,469); Camp, Jr. (U.S. PG Pub. 2004/0238541); and Burke, II et al (U.S. Patent No. 4,875,508).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carmen Lyles-Irving whose telephone number is (571) 272-2945. The examiner can normally be reached Monday through Friday from 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

CLI
07/24/2005